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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,599	10/01/2003	James P. Mazrolle	AEC.1001	7986

7590 05/04/2004

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,599

Applicant(s)

MAZROLLE ET AL.

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 6 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the first and second legs are hingeably coupled to an upper portion of the "L" bracket" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dalebout (5,637,059). Dalebout shows an adjustable bench capable of use as a canine training base comprising a bracket having a first portion which contacts a plank, and a second portion having an edge spaced from the first portion; first and second legs (16, 18) having proximal ends rotatably coupled to the lower portion of a bracket (14) about respective pivot points wherein the legs are rotatable from a first position in which the edge of the bracket contacts a ground surface (Figure 2) to a second position

in which the distal ends of the legs contact the ground surface (Figures 1, 3 , 4); wherein stoppers or locking pins (46, 47) welded to the bracket restrict travel of the legs; wherein the first and second legs are rotatably coupled to the second portion of the bracket.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7,9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. (6,712,709) in view of Dalebout (5,637,059). Henderson et al. show a teeter-totter comprising an elongated plank (100), and a base coupled to the plank, the base having a first leg and a second leg or lateral supports (52). Henderson et al., however, does not show that the legs are rotatably coupled to a bracket, or that the legs are rotatable from a first position to a second position such that the height of the plank from a ground surface is less when the legs are in the first position than when the legs are in the second position. Dalebout teaches an adjustable bench comprising a plank, and a base coupled to the plank wherein the base comprises first and second legs (16, 18) rotatably coupled to the lower portion of a bracket (14) wherein the legs are rotatable from a first position to a second position such that the height of the plank from a ground surface is less when the legs are in the first position than when the legs

are in the second position as depicted in Figures 2-4; and wherein stoppers or locking pins (46, 47) welded to a lower portion of the bracket restrict travel of the legs. It would have been obvious to one of ordinary skill in the art to provide that the base legs of the teeter-totter of Henderson et al. be rotatably attached to a bracket as taught by Dalebout that such an arrangement allow the height of the apparatus to be adjustable for a variety of users (of varying heights) and purposes (sitting, stepping, reclining exercises, etc). As to claim 2, it would have been obvious to one of ordinary skill in the art to provide that the bracket is "L" shaped since Dalebout discloses that alternate configurations of brackets may be used so long as they are sufficient to provide the desired transverse and longitudinal support to the legs. With respect to claims 7 and 14, although Dalebout shows that the legs are metal tubes, it is not specifically disclosed that the legs are aluminum. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the legs of aluminum material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

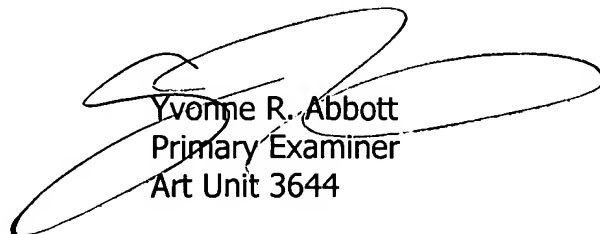
5. Claim 15 is allowed.
6. Claims 6 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As understood, claims 6 and 13 recite

that , "the first and second legs are hingeably coupled to an upper portion of the "L" bracket" in addition to the previous limitation in the independent claims from which these claims depend which state that the legs are also rotatably coupled to the bracket.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-5:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on (703)306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644